

REMARKS

The present Amendment is in response to the Official Action mailed April 20, 2007. Claims 1-14 have been amended herein. Claim 15 is new. Therefore, claims 1-15 are currently pending in the present application. The following sets forth Applicants' remarks relating to the currently pending claims and the outstanding Action.

Initially in the Action, the Examiner objected to the Abstract of the Disclosure because such, as originally filed, included more than 150 words. Applicants have amended the Abstract to comport with this requirement, and as such, removal of this objection is respectfully requested.

Further in the Action, the Examiner rejected to claims 1 and 5 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner noted several inconsistencies set forth in these claims and asked for further clarification as to whether Applicants were attempting to claim a combination or subcombination in such claims. In the present Amendment, claims 1-7 have been amended to clarify that the Applicants intend to capture claims to an intervertebral disc replacement device which includes a combination of several elements. More particularly, such claims now recite an intervertebral disc replacement device including an intervertebral disc replacement device, a bone screw and a retaining clip for use with the intervertebral disc replacement device. Applicants respectfully submit that these amendments overcome the rejections under § 112, and therefore respectfully request removal of same.

Still further in the Official Action, and with regard to the substantive portion of the Action, the Examiner rejected claims 1, 3, 4, and 7 under 35 U.S.C. § 102(e) as being

anticipated by U.S. Patent No. 6,652,525 to Assaker et al. ("Assaker"), claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,457,484 to Hameister ("Hameister"), and claims 8, 9, and 12-14 under 35 U.S.C. § 103(a) as being unpatentable over the combination of U.S. Patent No. 3,278,107 to Rygg ("Rygg") and U.S. Patent Application Publication No. 2005/0033430 to Powers et al. ("Powers"). Essentially, it is the Examiner's position that the cited references either fully anticipate or render obvious each and every one of the currently pending claims, save for claims 6, 10, and 11 which the Examiner has indicated constitute allowable subject matter. Applicants have added new independent claim 15 which incorporates the allowable subject matter of dependent claim 10 into independent claim 8. Because none of the cited prior art anticipates or obviates this new claim, allowance of same is respectfully requested. With regard to the above-noted rejections of the claims, Applicants set forth their thoughts below.

First, with regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e) in view of Assaker, Applicants note that such claim has been amended to require that at least one surface of the hook flange oppose the first side of the body. This is far different from that which is taught in Assaker. Where the present invention allows for the hook flange to be slid over a portion of the screw flange of the intervertebral disc replacement device, which in turn allows for retainment of the retaining clip on the screw flange, Assaker does not teach a similar structure. Rather, Assaker teaches flanges 25 adapted to form a shoe 25A slidable along a respective retaining clamp 26. Because of this new limitation in independent claim 1, Applicants respectfully submit that such claim is no longer anticipated by the Assaker reference.

Similarly, because of the above-amendment to independent claim 1, Applicants respectfully submit that the Hameister reference is no longer applicable to the claim. The Examiner cites FIG. 5 of Hameister as teaching a clip similar to the present invention, but Applicants note that such clip is seemingly unrelated to use with a spinal implant. Rather, Hameister teaches a display mounting assembly for collective plates or dishes. As independent claim 1 is now set forth as an intervertebral disc replacement device having a retaining clip for use therewith, Hameister is no longer applicable as an anticipatory reference. There is simply no discussion of the clip of Hameister being utilized in connection with an intervertebral disc replacement device. Furthermore, one of ordinary skill in the art of spinal surgery would not look to the Hameister reference for structure for use with an intervertebral disc replacement device.

In light of the above-discussed amendments, and the foregoing remarks, Applicants respectfully request allowance of independent claim 1. Although not specifically discussed herein, claims 2-7 also constitute allowable subject matter. A dependent claim is necessarily narrower than an independent claim from which it properly depends.

With regard to the rejection of independent claim 8, Applicants note that the Rygg reference does not teach a clip similar to the one of the present invention. Independent claim 8 has been amended herein to set forth further structure of this retaining clip, and Applicants respectfully submit that such are clearly not taught by Rygg. Therefore, Applicants respectfully request removal of the rejections of such claim, as well as the rejections of its dependent claims.

In light of all of the above, Applicants respectfully request allowance of each and every one of claims 1-15. Likewise, Applicants also note that each and every one of the

deficiencies of the present application have been addressed and thusly Applicants respectfully request allowance of the present matter.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.


If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By


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ABSTRACT

Instrumentation for implanting an intervertebral disc replacement device includes at least one retaining clip comprising a body member having a first side, a hook flange extending from the body member for clipping retention of the first side of the body member against the flange of the intervertebral disc replacement device and at least one lateral flange extending from the body member, partially received over a portion of the bone screw to prevent the bone screw from backing out of the at least one bone screw hole. The invention also comprises a prepackaged, sterile retaining clip assembly for an intervertebral disc replacement device, comprising an applicator having first and second applicator arms, each of the first and second applicator arms extending in substantially the same direction out from a common bending elbow for retaining one or more retaining clips, ~~a first retaining clip removably secured to a first end of the first applicator arm and an enclosure for holding the applicator and the at least one retaining clip removably secured thereto.~~